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United States Department of the Interior

FISH AND WILDLIFE SERVICE
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Memorandum

To: Area Manager, Albuquerque Area Office, Bureau of Reclamation, Albuquerque, New Mexico

From: Acting Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, Albuquerque, New Mexico

Subject: Biological Opinion for the Bureau of Reclamation's Proposed Pecos River Dam Operations

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion (BO) on the effects of the Bureau of Reclamation's (Reclamation) proposed Pecos River dam operations from the date of this opinion through summer 2006 (October 31, 2006) or until Reclamation implements a new operation defined in a Record of Decision, whichever occurs first, on the Pecos bluntnose shiner (*Notropis simus pecosensis*) (shiner) and its designated critical habitat and the interior least tern (*Sterna antillarum athalassos*) (tern) in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service received Reclamation's transmittal memo requesting formal consultation and the biological assessment (BA) for Pecos River water operations on December 13, 2002, and received supplemental information on January 10, January 30, May 20, and May 23, 2003. On December 19, 2005, the Service received Reclamation's transmittal memo to amend the BA, and received supplemental information to the final amended BA on December 23, 2005, January 19, February 14, February 15, February 23, February 28, March 7, and March 8, and April 7, 2006.

The current BO does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statute and the August 6, 2004, Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task Force v. USDI Fish and Wildlife Service* (CIV No. 03-35279) to complete the following analysis with respect to critical habitat. This consultation analyzes the effects of the action and its relationship to the function and conservation role of shiner critical habitat to determine whether the current proposal destroys or adversely modifies critical habitat. This document and the relevant analyses

from our June 18, 2003, BO represents our biological opinion for the shiner and its designated critical habitat in accordance with section 7 of the Act.

The Service determined that Reclamation provided information necessary to reinstate the formal consultation, as outlined in the regulations governing interagency consultation (50 CFR § 402.14). All information required for consultation was either included with your original 2002 BA, was provided in subsequent memorandums and meetings, or was otherwise accessible for our consideration and reference. You determined that the proposed operations on the Pecos River “may affect, is likely to adversely affect” the shiner and its critical habitat. You also determined that the proposed action “may affect, is likely to adversely affect” the tern. A complete administrative record of this consultation is on file in the Service’s New Mexico Ecological Services Field Office (NMESFO).

CONSULTATION HISTORY

Reclamation initiated formal consultation with the Service in 1991 to address operations on the Pecos River (Reclamation 1991). The consultation concluded in August 1991 with the issuance of a biological opinion (BO) (Cons. #2-22-91-F-198). In that BO (Service 1991), the Service found that the timing of releases of water from upstream storage facilities (large blocks of water for expedient delivery down the channel followed by extensive drying of the river channel) was likely to jeopardize the continued existence of the shiner. A Reasonable and Prudent Alternative (RPA) was successfully formulated by the Service and accepted by Reclamation that removed the likelihood of jeopardy to the shiner. The Service also found that implementation of the RPA removed the likelihood of take. Therefore, no incidental take for the shiner was provided in the BO.

Formal consultation with the Service was requested by the U.S. Army Corps of Engineers (Corps) in April 1992 concerning operations of Santa Rosa Dam and Reservoir and the potential of that operation to mobilize and transport environmental contaminants to downstream habitats occupied by the endangered shiner and the tern. The BO issued for that consultation (Cons. #2-22-92-F-240) found that the Corps’ ongoing and proposed operations of Santa Rosa Dam were likely to jeopardize the continued existence of the shiner and adversely modify its designated critical habitat on the Pecos River. An RPA was developed by the Service and accepted by the Corps to remove the likelihood of jeopardy/adverse modification.

With implementation of the RPA, the Service did not anticipate that continued operation of Santa Rosa Dam and Reservoir would result in incidental take of the shiner. Accordingly, no incidental take was authorized.

On December 8, 2005, an interagency meeting was held that included ornithologists and biologists from the New Mexico Department of Game and Fish, Reclamation, Bitter Lake National Wildlife Refuge, and the New Mexico Ecological Services Field Office (NMESFO) to discuss the current status of terns in the Pecos River Basin and opportunities to create additional breeding habitat for terns at Brantley Reservoir. The group requested Reclamation to obtain data on historic water levels at Brantley Reservoir during the May through August tern breeding

season to help determine which elevations within the storage space of Brantley Reservoir would be suitable for habitat creation. A site visit would also occur prior to the 2006 tern breeding season to view the operating pool of the reservoir and the 2004 tern nesting area location, and locate potential areas for habitat creation above the operation pool.

On January 5, 2006, subsequent to receiving Reclamation's amendment, NMESFO staff met with Reclamation to request additional information for this consultation. Reclamation was requested to provide the historic dates when block releases were received at Brantley Reservoir during the tern breeding season. There was also discussion about predictive information available on the number and timing of upstream block releases, and about the salt cedar clearing that was conducted on the shoreline of Brantley Reservoir in the vicinity of the 2004 tern nesting area. On January 19, 2006, NMESFO received a supplement to the amendment to the biological assessment for Pecos River Water Operations that addressed these additional requests for information on issues related to the terns at Brantley Reservoir.

BIOLOGICAL OPINION

I. Description of the Proposed Action

Reclamation's proposed action is storing and releasing water. The activities of Fort Sumner Irrigation District (FSID) are not part of the proposed action. Reclamation cannot store natural flow water that FSID is entitled to receive under its senior State water rights permit.

Reclamation will not store any natural inflow that is needed to target a downstream objective of avoiding river intermittency (defined as 0 to 5 cubic feet per second (cfs)) as stated below.

Therefore, Reclamation will only store natural flow water when such storage is allowed by State permit and when it is not needed to avoid intermittency. Reclamation's proposed action includes operating Sumner Dam in a manner that not only seeks to avoid jeopardizing the shiner, but also to conserve and protect the species under section 7(a)(1).

Consistent with these goals, Reclamation proposes the following:

A) Criteria for Diverting Water to Storage

- 1) Water needed to satisfy FSID's senior water right cannot be stored at Sumner or Santa Rosa Reservoirs.
- 2) When FSID requests water, as allowed under its water right, water needed to meet the downstream target of avoiding river intermittency will not be stored at Sumner or Santa Rosa Reservoirs if there is water available under the two-week flow calculation.
- 3) At all other times than those listed above, water will not be stored at Sumner or Santa Rosa Reservoirs if there is water available on a real-time basis as determined at the Puerto de Luna gage (PDL), and that water is needed to meet the downstream target of avoiding river intermittency.